HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 429 (SS) OF 2004

Manohar Dutt Bhatt,
S/o late Madhawanand,
R/o Patharkote, Post Singoli,
District – Pithoragarh. .....Petitioner.

Versus

1. Secretary Ministry of Home, Govt. India, New Delhi.
2. Directorate General Order Road Seema Sarak Bhawan, Ring Road, New Delhi, (Delhi Cantt.),
3. Major Recruitment Officer, Record Officer, GREF, Dighi Camp Pune -15.
4. Commander, GREF Centre, Recruitment Section, Dighi Camp, Pune – 16.
5. Officer, 65, Road Construction Coy-GREF, Pithoragarh.

.....Respondents.

Dated: 10.08.2006

Hon'ble Rajesh Tandon, J.

Heard Sri S.K. Mandal, Advocate for the petitioner and Standing Counsel for the Central Government.

2. By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the order dated 27.08.2003 passed by the respondents.

3. Briefly stated, according to the petitioner, his father Sri Madhawanand was driver with the respondents as

XGS-122472. He died in harness living behind his wife and the petitioner (minor at the relevant time).

4. After the death of the his father, the mother of the petitioner Smt. Bhagirathi Devi received a registered letter dated 20.08.1993 from the office of respondents informing her that if no members from her family is in government job, there is a provision for compassionate appointment in GREF in Class III and IV post.

5. Petitioner has submitted that at the time, when Smt. Bhagirathi Devi received letter dated 20.08.1993, no one in her family was eligible for the job as she herself was illiterate and the petitioner was minor. The date of birth of the petitioner is 09.07.1984.

6. However, after attaining the majority, he moved a representation on 02.03.2002 to the concerned department for appointment on compassionate ground under Dying in Harness Rules.

7. In reply to aforesaid representation, the petitioner received a letter dated 21.03.2002 issued by the respondent informing him that as per Government Policy at least 18 years of age is required, therefore, the petitioner may submit his representation in the month of July, 2002 after completion of 18 years of age.

8. In view of the aforesaid, the petitioner moved a representation on 01.07.2002. The same was rejected by the department vide reply dated 14.08.2002 stating that according to new government policy, the matter of compassionate

appointment can be disposed of within one year and the case of the petitioner does not come under this scheme.

9. Petitioner has submitted that on 29/30.10.2002, petitioner met respondent no. 4 personally at Pune and he was directed to join six months' training of the department. Complying the aforesaid direction, the petitioner appeared in the medical examination on 18.11.2002 in which he was found fit for the employment as CPL/ICPL in GREF 388 RPML, DETT-Dharchula for six months' training from 23.11.2002 upto 20.05.2003 under *Project Deepak*.

10. When nothing was done, the petitioner again moved a representation on 16.07.2003 before the respondent no.4 through his counsel requesting to consider him for compassionate appointment sympathetically.

11. The representation of the petitioner was rejected on 27.08.2003 stating that the application for appointment under Dying in Harness Rules has been moved after a lapse of more than eight year.

12. A counter affidavit has been filed, where it has been stated as under:-

> *"6. That immediately after the death, the respondent informed the wife of late Shri Madhwanadn that there is a provision in GREF that in case the family condition of the deceased is not good, any family member may apply to GREF on compassionate grounds.*
>
> *8. That, it is pertinent to mention here that lat Shri Madhwanant Bhatt expired on 01 August, 1993*

and his son, Manohar Dutt Bhatt, the present petitioner firstly moved the application on 02/03/2002. No application regarding this context was earlier moved by any family member and now this application has been moved after the expiry of 8 years and seven months.

9. *That, a reply on the application of the petitioner was immediately sent to the petitioner informing him that that application may be considered, for those candidates who attains the age 18 years and in the present case petitioner Manohar Dutt Bhatt has not completed that age of 18 yeas and hence the application of the petitioner cannot be entertained."*

13. Petitioner has submitted that since the petitioner was minor and his mother was an illiterate lady, therefore, they could not apply for compassionate appointment in time, therefore, the petitioner may be considered sympathetically.

14. In the case of ***Smt. Sushma Gosai and others Vs. Union of India and others, 1989 (4) SCC, 468***, the Apex Court has held as under:-

"We consider that it must be sated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post

for appointment supernumerary post should be created to accommodate the applicant.

In the result, we allow the appeal and in reversal of the order of the High Court, we direct respondent no. 2 to appoint Sushma Goasin appellant in the post to which she has already qualified. We further direct that she shall be appointed in an appropriate place in Delhi itself. The appointment shall be made within three weeks from today."

15. It is well settled that appointment on the compassionate grounds is purely humanitarian consideration because of the fact that family will not be able to make both ends meet. The purpose of providing employment to the dependant of a Government servant dying-in-harness in preference to anybody else is to mitigate hardship caused to the family of the deceased on account of his unexpected death while in service. Thus compassionate appointment is treated to alleviate the distress of the family.

16. In view of the above, liberty is given to the petitioner to apply afresh sating his grievances. If such a representation is filed the same shall be disposed of within a period of three months sympathetically from the date of production of the certified copy of the order. However, the order dated 27.08.2003 shall be subject to the fresh order passed on the fresh representation.

17. Writ petition is disposed of. No order as to costs.

10.08.2006 (Rajesh Tandon, J.)

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